IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 45 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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AMBICA TRADERS

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 45 of 1990
MR NR DIVETIA for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 19/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the assessee, the following question of law is referred for the opinion of this Court:-

"Whether the Income-tax Appellate Tribunal is right in law and on facts in holding that the bad debts amounting to Rs.22,202/- written off by the appellant is not allowable?"

2. The assessment year involved is assessment year 1984-85. the assessee is a registered firm dealing in purchase and sale of tyres. During the course of assessment proceedings, the assessee has claimed bad debts amounting to Rs.22,202/- in respect of five parties namely, Josh Transport Company, Ahmedabad, V.N. Pare, Ahmedabad, Nanubhai Naganbhai, Ahmedabad, Sagarbhai Sartanbhai, Dehgam and Kantibhai Becharbhai, Ahmedabad. The Income-tax Officer has rejected the said clam of the assessee on the ground that no positive evidence has been filed by the assessee so as to come to the conclusion that all the above debts were bad.

Being aggrieved by the said order, the assessee has preferred an appeal before the CIT (Appeals). While disposing of the said appeal, the CIT (Appeals) has held that the claim of the assessee was not on sound grounds. It is further observed that if the bad debt is to be written off and the amounts are debited to the Profit and Loss Account, the burden of proof is entirely on the assessee to establish that the debt was actually irrecoverable. Since this had not been proved in respect of any of the five debtors, the CIT (Appeals) has confirmed the view taken by the ITO and dismissed the assessee's claim.

Being further aggrieved by the said order of the CIT (Appeals), the assessee has filed second appeal before the Tribunal and the Tribunal has also taken the view that the assessee has failed to show that it had taken such steps in the direction of realising its debts which a prudent businessman would have taken in the normal course of business. The Tribunal, therefore, held that the authorities below have rightly rejected the assessee's claim for deduction of the amount in question as bad debt.

On the above facts at the instance of the assessee the above question of law was referred to this Court for its opinion.

3. Heard Mr Samir Divetia learned counsel appearing for the applicant- assessee and Mr Manish R Bhatt, learned Senior Standing Counsel appearing for the respondent- revenue.

4. At the time of hearing of this reference, our attention is invited to the decision of this Court in the case of Sarangpur Cotton Manufacturing Co. Ltd. vs CIT, (1983) 143 ITR 166 wherein, while dealing with a similar question, this Court has particularly laid down the four conditions covering the grant of reduction in respect of bad debt under clause (vii) of Section 36(1) of the Income-tax Act,1961, namely,

(i) the debt or loan should be in respect of a business which is carried on by the assessee in the relevant accounting year;

(ii) the debt should have been taken into account in computing the income of the assessee for the accounting year or for an earlier accounting year or should represent money lent in the ordinary course of his business of banking or money-lending;

(iii) the amount of debt or loan, or part thereof which is claimed as a deduction, should be established to have become bad in the accounting year; and

(iv) the amount should be written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for deduction is made for the first time.

After laying down the aforesaid conditions and after considering the facts of that case, this Court has come to the conclusion that the amount had become irrecoverable and the assessee was justified in writing it off in the year of account relevant to the assessment year under reference.

5. The above decision has been considered by this Court in Kamla Cotton co. vs. CIT, (1997) 226 ITR 605 wherein two questions were posed before this Court, which are as under:-

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount of Rs.73,582/- was not a bad and doubtful debt?

(ii) Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that the claim of bad and doubtful debt was premature in the assessment year 1973-74 and the debt became bad in the assessment year 1977-78 was perverse and/or not borne out by the evidence on record?"

While considering the above questions, this Court has observed that Section 36(1)(vii) as it stood at the relevant time,enabled the assessee to claim deduction in respect of any amount of debt or part thereof which was established to have become a bad debt in the previous year, subject to the provisions of sub-section (2) of the Act. In the context of the said provision it was held by a Division Bench of this Court in Sarangpur Cotton Manufacturing Co. Ltd. vs. CIT (supra) that when a businessman writes off an amount, there is a prima facie evidence that the amount is irrecoverable and the Department can rebut the prima facie inference to show that the position taken up by the assessee was not correct. It was held that the relevant test applicable in such cases was whether there was sufficient material on record to show that a decision taken by the assessee to write off the claim as a bad debt was or could be demonstrated to be improper or otherwise not bona fide. After observing the above ratio laid down by this Court in Sarangpur Cotton Mills Ltd. vs. CIT (supra) this Court in Kamla Cotton Co. vs CIT (supra) has further observed that the requirement that the debt has become bad or irrecoverable did not mean that the Department can insist upon demonstrative and infallible proof that the debt had become bad. Moreover, it is not compulsory for the assessee to take legal proceedings against the debtor for recovery of the claim before writing it off as a bad debt. In our opinion, when the creditor bonafide writes off the debt as there appears no chance of its recovery in the foreseeable future or where the recovery proceedings would be so cumbersome and expensive as to outweigh any advantage of instituting any recovery proceedings, he discharges the onus and would be entitled to claim deduction under the said clause (vii) of section 36(1) as it stood at the relevant time.

6. On the other hand, Mr Manish R Bhatt, learned Sr. Standing Counsel appearing for the revenue has strongly supported the case of the revenue and finding arrived at by the lower authorities while disallowing the assessee's claim for bad debts. It is further submitted that in absence of any evidence led by the assessee in establishing its claim, the authorities have come to the

correct conclusion and ultimately it is a finding of fact and no question of law arise.

7. We have heard the learned advocates appearing for the respective parties. We have also perused the orders passed by the authorities below. It is to be noted here that the claim is with regard to Rs.22,202/- only and that too, the same was to be recovered from five different parties. The Assessing Officer has discussed this point in the assessment order and as a matter of fact it has come on record that the assessee has issued the letters to at least three out of these five parties for recovery of the said amount. The detailed accounts were maintained which were also produced before the Assessing Officer. Though the debts were in respect of the assessment year 1984-85, the amounts were outstanding right from 1975-76 and the assessee has waited for quite some time in the hope that the amount would be recovered. Ultimately when all chances of recovery failed, the assessee has written of the amounts as bad debts on 4-11-1983 which falls within the accounting year, relevant to the assessment year in question. If we apply the principles laid down by this Court in the case of Kamla Cotton Co. vs. CIT (supra), it appears to us that for such a small amount the assessee should not be expected to file a suit for recovery of the amount and Department cannot insist for such actions against those parties from whom the amount was to be recovered. It is the decision taken by the businessman looking to the facts and circumstances of the case and when it appears to him that the amount was not recoverable, the same was written of as bad debt and claimed the same as deduction under Section 36(1)(vii) of the Act.

8. In the above view of the matter, we are of the view that the Tribunal has committed an error in rejecting the assessee's claim of bad debt amounting to Rs.22,202/- written of by the assessee by holding that the same was not an eligible deduction.

9. Before parting, we may take note of the submission made by Mr Manish R Bhatt to the effect that while dealing with the claim of the assessee none of the authorities below has dealt with the provisions contained in subsection (2) of section 37 of the Act. He has further submitted that while giving effect to the judgment of this Court, the Tribunal should examine this point in the light of the provisions contained in Section 37 (2) of the Act. We are, however, of the opinion that more than 17 years have gone and the claim is only of Rs.22000/- and odd and hence it is not advisable to leave

this question to be decided by the authorities. We, therefore, do not think it proper to give any direction in this regard.

With the above observations, we answer the question referred to us in the negative i.e. in favour of the assessee and against the revenue.

10. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

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